

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
W. R. GRACE & CO., <i>et. al.</i> ,)	Case No. 01-01139 (JKF)
)	
Debtors.)	

**AGREED JOINT MOTION OF THE DEBTORS AND THE
NONPARTY NATIONAL INSTITUTE FOR OCCUPATIONAL
SAFETY AND HEALTH FOR ENTRY OF A PROTECTIVE ORDER**

Nonparty National Institute for Occupational Safety and Health ("NIOSH"), a component of the Centers for Disease Control and Prevention, United States Department of Health and Human Services, and Debtors W.R. Grace & Co., et. al. hereby jointly move, through their undersigned counsel, for a Protective Order, pursuant to the Privacy Act, 5 U.S.C. § 552a(b)(11), and Rule 26(c)(7) of the Federal Rules of Civil Procedure. The movants request this Order to permit the release of records which contain material protected from disclosure under the Privacy Act and under assurances of confidentiality given pursuant to 42 U.S.C. 242m(d). In support of this motion, the movants state as follows:

1. Debtors have served a subpoena on NIOSH requesting documents pertaining to the "Vermiculite, Respiratory Disease and Asbestos Exposure in Libby, Montana: Update of a Cohort Mortality Study" (Libby Cohort Mortality Study) that contain material protected from disclosure under the Privacy Act and 42 U.S.C. 242m(d).

2. By exception, the Privacy Act authorizes NIOSH to produce covered records pursuant to a court order. See 5 U.S.C. § 522a(b)(11).

3. Without prior consent from those supplying the information, NIOSH is not permitted to release identifiable information obtained pursuant to assurances of confidentiality provided under 42 U.S.C. 242m(d) for any purpose other than the purpose for which it was obtained. Pursuant to this provision, NIOSH has obtained cause of death data from the National Death Index, another component of the United States Department of Health and Human Services, and individual states for the purpose of the Libby Cohort Mortality Study. In so doing, NIOSH agreed that no data obtained from these sources would be published or released in any form where the individual decedent would be identifiable. Pursuant to an order by this Court under Rule 26 (c)(7), NIOSH will release relevant portions of such records to W.R. Grace in a manner that will permit analysis of the data but will not directly identify the decedents, subject to the agreement by W.R. Grace or any party receiving that data in this litigation that no steps will be taken to identify the individual decedents.

4. Prompt entry of an order authorizing NIOSH to disclose such records is necessary for the conduct of discovery in this action. The movants, therefore, request that the attached Protective Order and Acknowledgment of Protective Order, stipulated to by the movants, be adopted and ordered by the Court.

Dated: August 22, 2007


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